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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 NICHOLAS ROLOVICH,

11 Plaintiff,

12 v.

13 WASHINGTON STATE
UNIVERSITY, an agency of the
State of Washington,

14 Defendant.¹
15

NO. 2:22-cv-00319-TOR

ANSWER TO FIRST
AMENDED COMPLAINT

16 **GENERAL DENIAL**

17 Defendant Washington State University (WSU), by and through its
18 attorneys, Robert W. Ferguson, Attorney General of Washington State, Spencer W.

19
20 ¹Defendants Patrick Chun and Jay Inslee have been removed from the case
21 caption, consistent with the Court's order granting in part Defendants' Motions
22 to Dismiss, ECF No. 33.

1 Coates, Assistant Attorney General, and Zachary J. Pekelis, Special Assistant
2 Attorney General, hereby answer Plaintiff's First Amended Complaint (FAC).
3 Except as expressly admitted or qualified, WSU denies each and every allegation,
4 statement, or charge in the FAC (whether contained in numbered paragraphs,
5 unnumbered paragraphs, headings, or elsewhere), and denies that Plaintiff is
6 entitled to any of the relief requested. To the extent that section and subsection
7 headings used in the FAC constitute allegations to which a response is required,
8 those allegations are denied.

9 **I.**

10 1. Paragraph 1 asserts allegations regarding Plaintiff's purported
11 motivations or legal conclusions or argument, none of which requires a response
12 by way of factual pleading. To the extent a response is required, Paragraph 1 is
13 denied.

14 2. Paragraph 2 asserts legal conclusions to which no response is
15 required, and contains characterizations of the FAC which speaks for itself. To
16 the extent a response is required, Paragraph 2 is denied.

17 **II.**

18 3. Paragraph 3 asserts a legal conclusion to which no response is
19 required. To the extent a response is required, Paragraph 3 is denied.

20 4. Paragraph 4 asserts legal conclusions to which no response is
21 required, and contains characterizations of an Employment Agreement that
22 speaks for itself. To the extent a response is required, Paragraph 4 is denied.

III.**1.**

5. The first sentence of Paragraph 5 contains characterizations of an Employment Agreement that speaks for itself. To the extent a response is required, WSU admits that the Employment Agreement allowed Plaintiff to appeal to the University President or designee a decision of the Athletic Director regarding termination for just cause. WSU admits that Plaintiff timely responded to the Athletic Director's notice of the provisions of the Agreement alleged to have been violated and that Plaintiff timely appealed the Athletic Director's decision to terminate for just cause. WSU admits that President Schultz denied Mr. Rolovich's appeal of the Athletic Director's decision on or about December 6, 2021. Paragraph 5 is otherwise denied.

2.

6. WSU admits that Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), and that EEOC notified WSU of this charge on February 17, 2022. The remainder of Paragraph 6 contains legal conclusions or argument to which no response is required. To the extent a further response is required, the allegations are denied.

7. WSU admits that the Department of Justice Civil Rights Division (DOJ) issued a Notice of Right to Sue to Plaintiff on August 16, 2022. WSU is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7 and therefore denies them.

1 **3.**

2 8. Admit.

3 9. Admit.

4 10. Paragraph 10 contains legal conclusions or argument to which no
5 response is required. To the extent a further response is required, the allegations
6 are denied.

7 **IV.**

8 11. WSU admits that Plaintiff was the Head Football Coach for WSU
9 from January 14, 2020, until his employment was terminated on December 6,
10 2021. WSU is without information sufficient to form a belief as to the truth of
11 the remaining allegations in Paragraph 11 and therefore denies them.

12 12. Admit.

13 13. WSU admits that Patrick Chun is the Athletics Director for WSU
14 and that he was sued in his individual capacity before being dismissed by this
15 Court as a Defendant. The remainder of Paragraph 13 contains legal conclusions
16 or argument to which no response is required. To the extent a further response is
17 required, the allegations are denied.

18 14. WSU admits that Jay Inslee is the Governor of Washington and that
19 he was sued in his official capacity before being dismissed by this Court as a
20 Defendant. To the extent a further response is required, the allegations are denied.

21 **V.**

22 15. WSU admits that it terminated Plaintiff's employment for just cause.

1 The remainder of Paragraph 15 contains legal conclusions or argument to which
2 no response is required. To the extent a further response is required, the
3 allegations are denied.

4 A.

5 16. WSU denies that the FAC attached a true and correct copy of the
6 employment agreement between Plaintiff and WSU as an exhibit. WSU admits
7 that it entered into a memorandum of understanding (MOU) with Plaintiff, which
8 was dated January 13, 2020. WSU further admits that it executed an employment
9 agreement (the Agreement) with Plaintiff in April 2020. Both the MOU and the
10 Agreement speak for themselves. The remaining allegations in Paragraph 16
11 consist of legal conclusions or argument to which no response is required. To the
12 extent a further response is required, the allegations are denied.

13 17. WSU admits that Paragraph 17 quotes some portions of the
14 Agreement, which speaks for itself. The remainder of Paragraph 17 contains legal
15 conclusions and argument to which no response is required. To the extent a
16 further response is required, the allegations are denied.

17 18. WSU admits that Paragraph 18 quotes some portions of the
18 Agreement, which speaks for itself. The remainder of Paragraph 18 contains legal
19 conclusions and argument to which no response is required. To the extent a
20 further response is required, the allegations are denied.

21 19. WSU admits that Paragraph 19 quotes Paragraph 4.1 of the
22 Agreement, which speaks for itself. The remainder of Paragraph 19 contains legal

1 conclusions and argument to which no response is required. To the extent a
2 further response is required, the allegations are denied.

3 20. Paragraph 20 contains legal conclusions and argument to which no
4 response is required. To the extent a further response is required, the allegations
5 are denied.

6 **B.**

7 21. WSU admits that Governor Inslee issued Proclamation 20-05, which
8 speaks for itself, on February 29, 2020. WSU further admits that Proclamation
9 20-05 was Governor Inslee's first proclamation related to COVID-19. WSU is
10 without information sufficient to form a belief as to the truth of the remaining
11 allegations in Paragraph 21 and therefore denies the same.

12 22. WSU admits that some employees—including assistant football
13 coaches—signed updated employment agreements in 2021, all of which speak
14 for themselves. The remainder of Paragraph 22 contains legal conclusions and
15 argument to which no response is required. To the extent a further response is
16 required, the allegations are denied.

17 23. WSU admits that the Agreement was never amended from its
18 original form. The remainder of Paragraph 23 contains legal conclusions and
19 argument to which no response is required. To the extent a further response is
20 required, the allegations are denied.

1 **C.**

2 24. WSU is without information sufficient to form a belief as to the truth
3 of the allegations in Paragraph 24 and therefore denies them.

4 25. WSU is without information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 25 and therefore denies them.

6 26. WSU is without information sufficient to form a belief as to the truth
7 of the allegations in Paragraph 26 and therefore denies them.

8 27. WSU is without information sufficient to form a belief as to the truth
9 of the allegations in Paragraph 27 and therefore denies them.

10 28. WSU is without information sufficient to form a belief as to the truth
11 of the allegations in Paragraph 28 and therefore denies them.

12 29. WSU is without information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 29 and therefore denies them.

14 **D.**

15 30. WSU denies that statements attributed to Mr. Chun in the FAC, even
16 if true, would “demonstrate[] his hostility toward Mr. Rolovich’s expressed
17 religious” beliefs. WSU is without information sufficient to form a belief as to
18 the truth of the remaining allegations in Paragraph 30 and therefore denies them.

19 31. WSU is without information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 31 and therefore denies them.

21 32. WSU is without information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 32 and therefore denies them.

1 33. WSU admits that prior to August 20, 2021, it had permitted
2 exemptions from the University's COVID-19 vaccination requirement for
3 employees based on either medical reasons or "personal/religious" objections.
4 Consistent with Governor Inslee's Proclamation 21-14, WSU modified its policy
5 to limit exemptions and reasonable accommodations to those employees who
6 were unable to receive the COVID-19 vaccines due to medical reasons or
7 sincerely held religious beliefs. To the extent a further response is required,
8 Paragraph 33 is denied.

9 34. WSU is without information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 34 and therefore denies them.

11 35. WSU is without information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 35 and therefore denies them.

13 36. WSU admits that Paragraph 36 accurately quotes a portion of an
14 August 24, 2021, Q13 Fox article that purports to quote an email from Kathryn
15 Leathers. WSU is without information sufficient to form a belief as to the truth
16 of the remaining allegations in Paragraph 36 and therefore denies them.

17 37. WSU admits that Paragraph 37 accurately quotes a portion of an
18 October 13, 2021, KXLY article, which speaks for itself. WSU denies the
19 remainder of Paragraph 37.

20 38. WSU is without information sufficient to form a belief as to the truth
21 of the allegations in Paragraph 38 and therefore denies them.
22

1 39. WSU is without information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 39 and therefore denies them.

3 40. WSU is without information sufficient to form a belief as to the truth
4 of the allegations in Paragraph 40 and therefore denies them.

5 41. WSU is without information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 41 and therefore denies them.

7 42. WSU admits that Plaintiff emailed WSU's Human Resource
8 Services (HRS) regarding exemptions from the COVID-19 vaccination
9 requirement. Those emails speak for themselves. To the extent a further response
10 is required, WSU is without information sufficient to form a belief as to the truth
11 of the remaining allegations in Paragraph 42 and therefore denies them.

12 43. WSU is without information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 43 and therefore denies them.

14 44. WSU is without information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 44 and therefore denies them.

16 45. WSU is without information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 45 and therefore denies them.

18 46. WSU is without information sufficient to form a belief as to the truth
19 of the allegations in Paragraph 46 and therefore denies them.

20 47. WSU is without information sufficient to form a belief as to the truth
21 of the in Paragraph 47 and therefore denies them.
22

1 48. WSU admits that on or about August 20, 2021, Governor Inslee
2 issued Proclamation 21-14.1, which speaks for itself.

3 49. WSU denies that Paragraph 49 accurately quotes a portion of
4 Proclamation 21-14.1, which speaks for itself. To the extent a further response is
5 required, Paragraph 49 contains legal conclusions to which no response is
6 required. To the extent a further response is required, the allegations are denied.

7 **E.**

8 50. WSU admits that Paragraph 50 accurately quotes a portion of a
9 September 13, 2021, DailyMed announcement, which speaks for itself. WSU
10 admits that footnote 3 of Paragraph 50 accurately quotes a portion of the
11 document hyperlinked therein, which speaks for itself. Except as expressly
12 admitted above, WSU denies all remaining allegations in Paragraph 50.

13 51. WSU denies that any letter was attached as an exhibit to the FAC.
14 WSU is without information sufficient to form a belief as to the truth of the
15 remaining allegations in Paragraph 51 and therefore denies them.

16 52. WSU is without information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 52 and therefore denies them.

18 53. WSU is without information sufficient to form a belief as to the truth
19 of the allegations in Paragraph 53 and therefore denies them.

20 54. Paragraph 54 contains legal conclusions and argument to which no
21 response is required. To the extent a further response is required, the allegations
22 are denied.

1 55. Paragraph 55 cites a federal statute, 21 U.S.C. § 360bbb-3, which
2 speaks for itself. Paragraph 55 contains legal conclusions and argument to which
3 no response is required. To the extent a further response is required, the
4 allegations are denied.

5 56. WSU admits that Paragraph 56 contains a link to the FDA's website
6 but denies that the link directs the reader to the Fact Sheet referenced in that
7 paragraph. Regardless, the Fact Sheet speaks for itself. To the extent a further
8 response is required, the allegations are denied.

9 57. Denied.

10 58. Denied.

11 **F.**

12 59. WSU admits that it timely established procedures for its employees
13 to request, and for the University to consider and approve or deny requests for,
14 religious and/or medical exemptions in accordance with Proclamation 21-14, as
15 amended. WSU denies the remaining allegations in Paragraph 59.

16 60. WSU admits that WSU published its procedures for evaluating
17 requests for religious exemptions pursuant to Proclamation 21-14, as amended,
18 on the University's website and that it shared "Frequently Asked Questions
19 (FAQs)" with answers. WSU further admits that Paragraph 60 accurately quotes
20 a portion of the FAQs, which speaks for itself, but denies that the link in footnote
21 4 of Paragraph 60 directs the reader to the FAQs. The remainder of Paragraph 60
22

1 contains legal conclusions and argument to which no response is required. To the
2 extent a further response is required, the allegations are denied.

3 61. WSU admits that Paragraph 61 accurately quotes portions of the
4 WSU-Everett webpage cited in footnote 5, which webpage speaks for itself. The
5 remainder of Paragraph 61 contains legal conclusions and argument to which no
6 response is required. To the extent any further response is required, WSU denies
7 the remaining allegations contained in Paragraph 61.

8 62. WSU admits that Paragraph 62 accurately quotes portions of the
9 October 7, 2021, Mercury News article cited in footnote 6, which article speaks
10 for itself. The remainder of Paragraph 62 contains legal conclusions and
11 argument to which no response is required. To the extent any further response is
12 required, WSU denies the remaining allegations contained in Paragraph 62.

13 **G.**

14 63. Denied.

15 64. WSU admits that HRS sent Mr. Chun an email on October 6, 2021,
16 which speaks for itself. The remaining allegations in Paragraph 64 are denied.

17 65. WSU admits that Paragraph 65 accurately quotes portions of an
18 October 6, 2021, email from HRS, which speaks for itself. To the extent a further
19 response is required, any remaining allegations are denied.

20 **H.**

21 66. WSU admits that the Athletics Department sent HRS two
22 memoranda dated October 13, 2021, which speak for themselves. To the extent

1 a further response is required, any remaining allegations in Paragraph 66 are
2 denied.

3 67. WSU admits that Paragraph 67 accurately quotes portions of one of
4 the October 13, 2021, Athletics Department memoranda and HRS's October 6,
5 2021 email, which speak for themselves. To the extent a further response is
6 required, any remaining allegations in Paragraph 67 are denied.

7 68. WSU admits that on October 14, 2021, the Department of
8 Environmental Health and Safety (EH&S) sent a memorandum to Mr. Chun and
9 the Athletics Department, and that Paragraph 68 accurately quotes a portion of
10 this memorandum, which speaks for itself. To the extent a further response is
11 required, any remaining allegations in Paragraph 68 are denied.

12 69. WSU admits that the Athletics Department sent HRS a
13 memorandum in response to the October 14, 2021, EH&S memorandum, and that
14 Paragraph 69 accurately quotes a portion of this memorandum, which speaks for
15 itself. To the extent a further response is required, any remaining allegations are
16 denied.

17 70. WSU admits that the Athletics Department issued a memorandum
18 in response to the October 14, 2021, EH&S memorandum, and that Paragraph 70
19 accurately quotes some portions of this memorandum, which speaks for itself. To
20 the extent a further response is required, any remaining allegations are denied.
21
22

1 **I.**

2 71. WSU admits that it developed protocols for employees during the
3 COVID-19 pandemic and that Plaintiff, as a former WSU employee, was
4 required to follow them. WSU is without information sufficient to form a belief
5 as to the truth of the remaining allegations in Paragraph 71 and therefore denies
6 them.

7 72. WSU admits that Paragraph 72 accurately quotes portions of the
8 Spokesman Review article cited in footnote 7, and that the article appears to have
9 originally run in the Seattle Times. The article speaks for itself. To the extent any
10 further response is required, WSU denies the remaining allegations contained in
11 Paragraph 72.

12 73. WSU is without information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 73 and therefore denies them.

14 74. WSU is without information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 74 and therefore denies them.

16 75. WSU admits that Paragraph 75 links to a Post Millennial article
17 dated November 19, 2021, which speaks for itself. WSU is without information
18 sufficient to form a belief as to the truth of the remaining allegations in
19 Paragraph 75 and therefore denies them.

1 **J.**

2 76. WSU admits that counsel for Plaintiff provided WSU with a
3 declaration, purportedly from Dr. Bhattacharya, on November 2, 2021, which
4 speaks for itself. WSU denies the remainder of the allegations of Paragraph 76.

5 77. WSU is without information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 77 and therefore denies them.

7 78. WSU is without information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 78 and therefore denies them.

9 79. WSU is without information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 79 and therefore denies them.

11 80. Denied.

12 81. WSU admits that Paragraph 81 accurately reproduces a portion of
13 the declaration provided to WSU on November 2, 2021, purportedly by Dr.
14 Bhattacharya, which speaks for itself. WSU is without information sufficient to
15 form a belief as to the truth of the remaining allegations in Paragraph 81 and
16 therefore denies them.

17 82. WSU admits that Paragraph 82 accurately quotes a portion of the
18 declaration provided to WSU on November 2, 2021, purportedly by Dr.
19 Bhattacharya, which speaks for itself. WSU is without information sufficient to
20 form a belief as to the truth of the remaining allegations in Paragraph 82 and
21 therefore denies them.
22

1 83. WSU is without information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 83 and therefore denies them.

3 84. WSU admits that Paragraph 84 accurately quotes a portion of the
4 Declaration provided to WSU on November 2, 2021, purportedly by Dr.
5 Bhattacharya, which speaks for itself. WSU is without information sufficient to
6 form a belief as to the truth of the remaining allegations in Paragraph 84 and
7 therefore denies them.

8 85. WSU admits that Paragraph 85 accurately quotes three words of a
9 July 28, 2021, Washington Post article, which speaks for itself. WSU is without
10 information sufficient to form a belief as to the truth of the remaining allegations
11 in Paragraph 85 and therefore denies them.

12 86. WSU admits that Paragraph 86 accurately quotes a portion of the
13 Declaration provided to WSU on November 2, 2021, purportedly by Dr.
14 Bhattacharya, which speaks for itself. WSU is without information sufficient to
15 form a belief as to the truth of the remaining allegations in Paragraph 86 and
16 therefore denies them.

17 87. Paragraph 87 characterizes the conclusions of the declaration
18 provided on November 2, 2021, purportedly by Dr. Bhattacharya, which speaks
19 for itself. Footnote 13 to Paragraph 87 cites two news articles, both of which
20 speak for themselves. WSU is without information sufficient to form a belief as
21 to the truth of the remaining allegations in Paragraph 87 and therefore denies
22 them.

1 88. Denied.

2 89. Paragraph 89 contains legal conclusions and argument to which no
3 response is required. Paragraph 89 characterizes the opinion of a purported expert
4 that speaks for itself. To the extent a further response is required, the allegations
5 are denied.

6 **K.**

7 90. WSU admits that Paragraph 90 contains an accurately quoted
8 portion from the October 18, 2021, email from HRS Exemptions to Plaintiff. The
9 email speaks for itself. WSU is without information sufficient to form a belief as
10 to the truth of the remaining allegations in Paragraph 90 and therefore denies
11 them.

12 91. WSU denies the first sentence of Paragraph 91. WSU admits that
13 the second sentence of Paragraph 91 contains an accurately quoted portion from
14 the October 18, 2021, email from HRS Exemptions to Plaintiff, which speaks for
15 itself, and otherwise denies the second sentence of Paragraph 91.

16 92. WSU admits that the October 18, 2021, email from HRS to Plaintiff
17 stated that “it would pose an undue hardship to the University and/or a threat to
18 yourself and others to allow you to remain in your position while unvaccinated.”
19 The email speaks for itself. To the extent a further response is required, any
20 remaining allegations in Paragraph 92 are denied.

21 93. WSU admits that it provided Mr. Rolovich with a Notice of Intent
22 to Terminate With Just Cause on October 18, 2021, which speaks for itself.

1 Paragraph 93 also contains legal conclusions and arguments to which no response
2 is required. To the extent any further response is required, WSU is without
3 information sufficient to form a belief as to the truth of the remaining allegations
4 in Paragraph 93 and therefore denies them.

5 94. WSU is without information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 94 and therefore denies them.

7 95. WSU is without information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 95 and therefore denies them.

9 96. WSU is without information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 96 and therefore denies them.

11 97. Paragraph 97 contains legal conclusions and argument to which no
12 response is required. To the extent a further response is required, the allegations
13 are denied.

14 **COUNT I**
15 **BREACH OF CONTRACT**
16 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**
17 **DEALING**

18 98. WSU incorporates by reference its answers to the preceding
19 paragraphs.

20 99. Paragraph 99 contains legal conclusions and argument to which no
21 response is required. To the extent a further response is required, the allegations
22 are denied.

1 100. WSU admits that it terminated Plaintiff's employment in
2 December 2021 for just cause. The remainder of Paragraph 100 contains legal
3 conclusions and argument to which no response is required. To the extent a
4 further response is required, the allegations are denied.

5 101. Denied.

6 102. Denied.

7 103. Paragraph 103 contains legal conclusions and argument to which no
8 response is required. To the extent a further response is required, the allegations
9 are denied.

10 104. Paragraph 104 contains legal conclusions and argument to which no
11 response is required. To the extent a further response is required, the allegations
12 are denied.

13 105. Denied.

14 106. Denied.

15 107. Denied.

16 108. Denied.

17 109. Paragraph 109 contains legal conclusions and argument to which no
18 response is required. To the extent a further response is required, the allegations
19 are denied.

20 110. Denied.

21 111. Denied.

COUNT II
WASHINGTON LAW AGAINST DISCRIMINATION
RCW 49.60 *et seq.*

112. WSU incorporates by reference its answers to the preceding paragraphs.

113. Denied.

114. Paragraph 114 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

COUNT III
WASHINGTON CONSTITUTION, ARTICLE 1, SECTION 11
DISCRIMINATION AGAINST RELIGION/CONSCIENCE

115. WSU incorporates by reference its answers to the preceding paragraphs.

116. Count III was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 116 is denied.

117. Count III was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 117 is denied.

118. Count III was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 118 is denied.

COUNT IV
VIOLATION OF TITLE VII, 42 U.S.C. § 2000e, et seq.

119. WSU incorporates by reference its answers to the preceding paragraphs.

120. Paragraph 120 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

121. Paragraph 121 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

122. Paragraph 122 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

123. Paragraph 123 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

124. Denied.

125. Denied.

126. Paragraph 126 contains legal conclusions and argument to which no response is required. To the extent a further response is required, the allegations are denied.

127. Denied.

128. Denied.

129. Denied.

COUNT V
42 U.S.C., SECTION 1983
First Amendment-Free Exercise of Religion and Fourteenth Amendment-
Due Process
(Defendant Chun only, in His Individual Capacity)

130. WSU incorporates by reference its answers to the preceding paragraphs.

131. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 131 is denied.

132. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 132 is denied.

133. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 133 is denied.

134. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 134 is denied.

135. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 135 is denied.

136. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 136 is denied.

137. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 137 is denied.

138. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 138 is denied.

139. Count V was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 139 is denied.

COUNT VI
42 U.S.C., SECTION 1983
(First Amendment-Free Exercise of Religion)

140. WSU incorporates by reference its answers to the preceding paragraphs.

141. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 141 is denied.

142. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 142 is denied.

143. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 143 is denied.

144. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 144 is denied.

145. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 145 is denied.

146. Count VI was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 146 is denied.

COUNT VII
FOURTEENTH AMENDMENT-DUE PROCESS (As Applied)

147. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 147 is denied.

148. Count VII was dismissed with prejudice per this Court's May 30, 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent any response is required, Paragraph 148 is denied.

1 149. Count VII was dismissed with prejudice per this Court's May 30,
2 2023, Order (ECF No. 33). Accordingly, no response is required. To the extent
3 any response is required, Paragraph 149 is denied.

4 **PRAYER FOR RELIEF**

5 Paragraphs a through i of the Prayer for Relief section of the FAC
6 constitute Plaintiff's requests for relief, to which no response is required. To the
7 extent a response is required, WSU denies Plaintiff is entitled to the relief
8 requested or to any relief whatsoever.

9 **AFFIRMATIVE DEFENSES**

10 WSU's affirmative defenses to the FAC are set forth below. By setting forth
11 the following defenses, WSU does not assume burden of proof on the matter and
12 issue other than those on which it has the burden of proof as a matter of law. WSU
13 reserves the right to supplement these defenses.

14 1. Plaintiff has failed to state a state a claim, in whole or in part, upon
15 which relief may be granted.

16 2. Plaintiff's damages, if any, were caused by Plaintiff's own acts or
17 omissions or by the acts or omissions of third parties.

18 3. The FAC fails, in whole or in part, because some or all of the relief
19 sought may be barred by Plaintiff's failure to mitigate damages.

20 4. WSU's actions with respect to Plaintiff and concerning Plaintiff's
21 employment were based solely on legitimate, non-discriminatory, and
22 non-retaliatory business reasons, and were the result of a good faith effort to

1 comply with the law.

2 5. Plaintiff's claims are barred in whole or in part by the doctrines of
3 laches, waiver, unclean hands, estoppel, and/or fraud on the court.

4 6. Accommodating Plaintiff would have imposed an undue hardship
5 on WSU.

6 7. WSU has not yet had a full opportunity to conduct discovery and,
7 accordingly, reserves the right to assert additional affirmative defenses that may
8 be disclosed in the course of discovery.

9 **WSU'S REQUEST FOR RELIEF**

10 Wherefore, WSU prays that the Court:

- 11 1. Dismiss Plaintiff's First Amended Complaint with prejudice;
12 2. Deny all relief that Plaintiff requests;
13 3. Grant WSU its costs and reasonable attorneys' fees; and
14 4. Grant WSU such other and further relief as the Court may deem just
15 and proper.

16 DATED this 13th day of June 2023.

17 ROBERT W. FERGUSON
18 Attorney General

19 /s/ Spencer W. Coates
20 SPENCER W. COATES, WSBA #49683
21 Assistant Attorney General
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*Attorneys for Defendant Washington
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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 13th day of June 2023, at Seattle, Washington.

/s/ Spencer W. Coates
SPENCER W. COATES, WSBA #49683
Assistant Attorney General